Supreme Court, U.S.
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No. 05-1034

In The
Supreme Court of the United States

MICHAEL CARUSO,

Petitioner,

v.

YAMHILL COUNTY, an Oregon municipal corporation, by and through its COUNTY COMMISSION, and STATE OF OREGON,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF LEGAL QUESTIONS PRESENTED ON REVIEW

O.R.S. § 280.070(4) requires that every ballot measure in Oregon proposing any property tax change include a warning on the ballot itself, stating "This measure may cause property taxes to increase more than three percent." This same warning is required on every such ballot, adjacent to the YES/NO choices for voters, regardless of the size of actual proposed change. Plaintiff refers to this as "the 3% warning".

These questions are presented:

1. Does O.R.S. § 280.070(4) violate the First Amendment rights of ballot measure sponsors or petitioners to communicate on the subject of a ballot measure presented to voters?

2. Should strict scrutiny apply when:

   A. The State mandates that the "yes" and "no" choices on a ballot measure be accompanied by a slogan found by the U.S. District Court to be "patently false" and "profoundly misleading" as applied to that ballot measure?

   B. The State allows no judicial review of the mandatory slogan for accuracy or fairness, as applied to any ballot measure?

3. If strict scrutiny applies, did the State of Oregon justify application of the 3% warning by demonstrating that it was narrowly tailored to achieve a compelling or overwhelming state interest?

4. If strict scrutiny does not apply, did the State justify application of the 3% warning by demonstrating that it was a reasonable and nondiscriminatory regulation necessary to achieve an important state interest?

STATEMENT OF LEGAL QUESTIONS PRESENTED ON REVIEW – Continued

5. Does the mandatory appearance of the 3% warning on the ballot, whether or not it is true:

   A. Impair the First Amendment rights of petitioners to be free of coerced, false speech on a public issue?

   B. Impair the Fifth and Fourteenth Amendment rights of petitioners and voters to due process and fundamental fairness in elections?

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption. Petitioner for Certiorari is an individual only and not a corporation.

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CITATIONS TO REPORTS OF OPINIONS

The decision of the Ninth Circuit Court of Appeals is *Caruso v. Yamhill County ex rel. County Commissioner*, 422 F.3d 848 (2005) (No. 04-35155).

BASIS FOR JURISDICTION

This Court has jurisdiction to hear this Writ of Certiorari under 28 U.S.C. § 1254. The Oregon statute requiring that every ballot measure proposing any change to property taxes be labeled, on the ballot itself, with the legend "This measure may cause property taxes to increase more than three percent," regardless of the actual proposed change, as applied and interpreted by a final judgment of the Ninth Circuit Court of Appeals, is repugnant to First, Fifth, and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES, INVOLVED IN THE CASE

A. CONSTITUTIONAL PROVISIONS.

Plaintiff was deprived of his rights under the First and Fifth Amendments of the U.S. Constitution, made applicable to the states by the Fourteenth Amendment.

> Article I.
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> Article V.
>
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in

> the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

B. STATUTES.

O.R.S. § 280.070 and O.R.S. § 250.195 are set forth in the Appendix.

STATEMENT OF FACTS

The procedural history is at *Caruso v. Yamhill County ex rel. County Commissioner*, 422 F.3d 848, 851-52 (2005). The underlying facts are well presented in the District Court Opinion and Order of January 14, 2004, App. 29-42 [hereinafter "District Court Opinion – Caruso"]. Because the circumstances of this case were nearly identical to those in an earlier case, *Horton v. Multnomah County*, District of Oregon Case No. CV 03 1257ST, the District Court Opinion – Caruso expressly incorporated the Opinion and Order in *Horton* (set out at App. 43-66).

Michael Caruso, Petitioner herein, was the Chief Petitioner on a petition placing the question of formation of a People's Utility District (PUD) on the county ballot. Oregon law requires that the question of a tax levy for the proposed PUD must also be presented at the same election. Therefore, the Yamhill County Commission adopted a ballot title for the levy question which began:

> **BALLOT TITLE MEASURE NO. 36-55**
>
> **CAPTION:**
>
> AUTHORIZES SPECIAL LEVY IF YAMHILL COUNTY PUD IS FORMED